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10/574,154	03/29/2006	Edwin Otto Maria Janus	SME-005	7771

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STAMFORD, CT 06902

EXAMINER

WOMACK, DOMINIQUE A

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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06/09/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/574,154

Applicant(s)

JANUS, EDWIN OTTO MARIA

Examiner

DOMINIQUE WOMACK

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
4a) Of the above claim(s) 12-16 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-11 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 29 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date 20060329
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-11, drawn to a method for baking.

Group II, claim(s) 12-13, drawn to a bakery product.

Group III, claim(s) 14-15, drawn to a system for baking product.

2. The inventions listed as Groups I, II, and III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The common technical feature of Groups I, II, and III appears to be a method for baking a product comprising: providing an uncooked product including an envelope and a filling, said envelope at least substantially made of dough; subsequent to providing the uncooked product heating the filling by means of electromagnetic waves so as to initiate the cooking process; and subsequent to said heating, baking of the envelope in a heat transfer oven.

3. Claim 1 of Group 1 is anticipated in view of Sachiko Cooking (2004) therefore the claims are not considered to provide a contribution over the prior art and a lack of unity exists.

4. During a telephone conversation with Attorney Jay Sbröllini on March 16, 2009 a provisional election was made without traverse to prosecute the invention of Group 1, claims 1-11. Affirmation of this election must be made by applicant in replying to this Office action.

Claims 12-15 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

6. In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained.

Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 2-5 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
9. Claim 2 recites the limitation "the rising" in line 2. There is insufficient antecedent basis for this limitation in the claim.
10. Claim 3 recites the limitation "the rising process" in line 3. There is insufficient antecedent basis for this limitation in the claim.
11. Claim 4 recites the limitation "the operations" in line 2. There is insufficient antecedent basis for this limitation in the claim.
12. Regarding claim 4, the recitation "semi-continuous" is indefinite because it is unclear what defines a semi-continuous process.
13. Claim 5 recites the limitation "the operations" in line 2. There is insufficient antecedent basis for this limitation in the claim.
14. Claim 11 recites the limitations "the humidity" and "the atmosphere" in line 2. There is insufficient antecedent basis for this limitation in the claim.
15. Regarding claim 11, the recitation "maintained at a high level" is indefinite because it is unclear what constitutes a high level of humidity within the atmosphere.

Claim Rejections - 35 USC § 102

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

17. **Claims 1-6, 8 and 10 are rejected under 35 U.S.C. 102(a) as being anticipated by Sachiko Cooking (2004).**

18. Regarding claims 1, 6 and 10, Sachiko Cooking discloses method for preparing sausage rolls comprising the steps of:

- a. Flattening a dough piece and placing a sausage in it and rolling up and closing the end;
- b. Cooking the sausage rolls for 10 seconds in the microwave; and
- c. Baking the sausage rolls at 400° F for 10- 12 minutes (pg. 2, items 9-12).

19. Regarding claims 2-3, it is inherent that the microwaving of the uncooked sausage rolls initiated the rising process.

20. Regarding claims 4-5, Sachiko discloses a method that can be realized as a semi-continuous as well as continuous process.

21. Regarding claim 8, it is inherent that the sausage rolls are transported from the microwave to the convection oven.

Claim Rejections - 35 USC § 103

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

24. **Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sachiko Cooking (2004).**

25. Regarding claim 7, Sachiko Cooking does not specifically disclose cooking the sausage rolls in the microwave for 3 minutes. However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to cook for 3 minutes in order to sufficiently heat the sausage roll in the microwave. One of ordinary skill in the art would be motivated to cook the sausage roll for at least 3 minutes because the appropriate time will depend upon the power output of the microwave generator, the wave length of microwave energy used and the amount of moisture in the article being cooked as well as other factors which would be apparent to those skilled in the art.

26. Regarding claim 9, Sachiko Cooking does not specifically disclose heating the sausage rolls serially and baking the sausage rolls parallel. However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to heat the sausage rolls serially and bake the sausage rolls in parallel. One of ordinary skill in the art would be motivated to cook the food serially in the microwave due to the size constraints of a conventional household microwave and to ensure even cooking. One of ordinary skill the art would be motivated to bake the sausage rolls in parallel because conventional ovens can typically hold more than microwaves and tend to cook larger amounts of food equally.

27. **Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sachiko Cooking (2004) in view of Han et al. [US Pat No. 5,786,577].**

28. Regarding claim 11, Sachiko Cooking fails to teach heating the sausage rolls in a high humidity atmosphere.

29. Han discloses a microwave oven with which a drying phenomenon caused by an evaporation of moisture from the food can be prevented by a periodic supply of steam in the course of dielectric heating of the food to help maintain a good taste and an original cooked state of food (col. 2, lines 1-10). The periodic supply of steam is interpreted to read on a maintaining a high humidity atmosphere.

30. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to add use microwave provided with a steam generating device to heat the sausage roll of Sachiko in order to heat the sausage rolls in a high humidity atmosphere. One of ordinary skill in

the art would be motivated to heat the sausage rolls in a high humidity atmosphere because such an atmosphere helps to maintain good taste and prevents food from drying out.

31. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hong et al. [US Pat No. 4,693,899] in view of Thelen [US Pat No. 3,479,188].

32. Regarding claims 1 and 8, Hong discloses a method for reheating frozen food comprising the steps of subjecting the frozen product to microwave energy for a period of time sufficient to thaw the filling without effecting substantial dehydration and thereafter subjecting the food product to conventional oven heat for a brief period sufficient to effect dehydration of the exterior cooked dough to a degree sufficient to provide a slightly firm surface crust thereon (col. 8, line 61 - col. 9, line 2). The frozen food product is a cooked filled dough product (col. 5, lines 27-37).

33. Regarding claim 1, Hong fails to disclose the heating and baking of an uncooked product.

34. Thelen relates to the cooking of a doughnut.

35. Regarding claim 1, Thelen discloses that microwave energy is supplied to the cooking chamber of the oven for a period of time necessary to heat the interior of the doughnut, expand the cells and set the crumb, but not for sufficient time to substantially dry the inside of the article or cause a browning or hardening of the outside surface (col. 4, lines 45-51). Then the surface of the product is browned by the application of heat to the exterior only.

36. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to use the method of Hong to cook an uncooked product. One of ordinary skill in the art would

be motivated to motivated to use the method of Hong to cook an uncooked product because Thelen illustrates than it is will known to one of ordinary skill in the art to heat the interior of a product with microwave energy and then to cook the exterior of a product with heat.

37. Regarding claims 2-3, although not disclosed in Hong or Thelen, it is inherent that the microwaving of the uncooked filled dough product would initiate the rising process.

38. Regarding claims 4-5, Hong in view of Thelen discloses a method that can be realized as a semi-continuous as well as continuous process.

39. Regarding claim 6, Hong in view of Thelen discloses that the food is subjected to microwave energy for 2 minutes (Hong: col. 12, lines 13-18).

40. Regarding claim 7, Hong in view of Thelen does not specifically disclose heating uncooked dough products in the microwave for 3 minutes. However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to cook for 3 minutes in the order to sufficiently heat the filled dough product in the microwave. One of ordinary skill in the art would be motivated to cook the filled dough product for at least 3 minutes because the appropriate time will depend upon the power output of the microwave generator, the wave length of microwave energy used and the amount of moisture in the article being cooked as well as other factors which would be apparent to those skilled in the art.

41. Regarding claim 9, Hong in view of Thelen does not specifically disclose heating uncooked filled dough products in the microwave serially and baking the uncooked filled dough product parallel. However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to heat the filled dough product serially and bake the filled dough product in parallel. One of ordinary skill in the art would be motivated to cook the food serially in the

microwave due to the size constraints of a conventional household microwave and to ensure even cooking. One of ordinary skill the art would be motivated to bake the filled dough product in parallel because conventional ovens can typically hold more than microwaves and tend to cook larger amounts of food equally.

42. Regarding claim 10, Hong in view of Thelen discloses that the filling for the dough product can comprise meat (Hong: col. 6, lines 55-62).

43. **Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hong et al. [US Pat No. 4,693,899] in view of Thelen [US Pat No. 3,479,188] in further view of Han et al. [5,786,577].**

44. Regarding claim 11, Hong in view of Thelen fails to teach heating the filled dough product in a high humidity atmosphere.

45. Han discloses a microwave oven with which a drying phenomenon caused by an evaporation of moisture from the food can be prevented by a periodic supply of steam in the course of dielectric heating of the food to help maintain a good taste and an original cooked state of food (col. 2, lines 1-10). The periodic supply of steam is interpreted to read on a maintaining a high humidity atmosphere.

46. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to add use microwave provided with a steam generating device to heat the filled dough product of Hong in view of Thelen in order to heat the filled dough product in a high humidity atmosphere. One of ordinary skill in the art would be motivated to heat the filled dough product

in a high humidity atmosphere because such an atmosphere helps to maintain good taste and prevents food from drying out.

Conclusion

47. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOMINIQUE WOMACK whose telephone number is (571) 270-7366. The examiner can normally be reached on Monday-Thursday, 9:30am-6:00pm.

48. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571) 272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

49. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. W./
Dominique Womack
Examiner, Art Unit 1794

5 June 2009

/JENNIFER MCNEIL/

Supervisory Patent Examiner, Art Unit 1794